

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SHARIETTA SPIRES, <i>on behalf of D.D.</i>,)	CASE NO. 1:15-cv-01096-DAP
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
vs.)	<u>ORDER ADOPTING REPORT</u>
)	<u>AND RECOMMENDATION</u>
COMMISSIONER OF SOCIAL SECURITY,)	
)	
Defendant.)	

Before the Court is the Report and Recommendation of Magistrate Judge Kathleen B. Burke ("R & R"), Doc #. 15, which recommends that the Court grant summary judgment in favor of Defendant Commissioner of Social Security because Plaintiff Spires's Complaint was untimely filed. A copy of the R&R was mailed to Spires on November 2, 2015. It is now November 25, and Spires has yet to file any objection to the R&R.

Under the relevant statute,

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1). The failure to timely file written objections to a Magistrate Judge's R&R

constitutes a waiver of the right to obtain a de novo review of the R&R in the district court.

United States v. Walters, 638 F.2d 947, 949–50 (6th Cir. 1981). The failure to file written objections also results in a waiver of the right to appeal. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985).

The Court has reviewed the Magistrate Judge’s R & R. The Court agrees with the Magistrate Judge that the Motion to Dismiss should be treated as a Motion for Summary Judgment and that the available evidence demonstrates that Spires filed her Complaint after the time limitations provided had expired and is not entitled to equitable tolling. Accordingly, the Court ADOPTS the Magistrate Judge’s R&R, Doc. # 15, GRANTS Defendant’s Motion, Doc #: 10, and DISMISSES the case.

IT IS SO ORDERED.

/s/ Dan A. Polster Nov. 25, 2015
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE